

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FREDERICK BANKS,

Petitioner,

vs.

MARK HORNAK, et al.,

Respondents.

Case No. 2:16-cv-01151-GMN-NJK

**ORDER**

Petitioner is in custody at FCI Butner, in North Carolina.<sup>1</sup> He has filed an application to proceed in forma pauperis (ECF No.1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The court will dismiss this action.

If petitioner is not attacking his sentence, then the correct respondent is the warden of the prison where petitioner is held. 28 U.S.C. § 2242. The correct district court in which petitioner should file the petition is the district court where the warden is located. 28 U.S.C. § 2241(a). In this case, it would be the United States District Court for the Eastern District of North Carolina. If the petition could be construed as a motion attacking petitioner's sentence, then petitioner would need to file the motion in the court where he was convicted. 28 U.S.C. § 2255(a). Based upon the name of the first respondent, the Honorable Mark Hornak, that court would be the United States District Court for the Western District of Pennsylvania.

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<sup>1</sup>The court obtained that information on-line. Petitioner has given his address as the offices of the Federal Bureau of Prisons in Washington, DC.

1 The court will not transfer this action to either of those two courts. First, the petition is so  
2 vague that the court cannot determine whether it should be a petition under § 2241 or a motion  
3 under § 2255, and thus the court cannot determine which court would be the correct court. Second,  
4 even if it was clear which court was the correct court, it still would not be in the interests of justice  
5 to transfer a vague petition to that court. Petitioner needs to compose a clear, concise petition or  
6 motion and file it in that court.


7 Reasonable jurists would not find the court's conclusions to be debatable or wrong, and the  
8 court will not issue a certificate of appealability.

9 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (ECF No.  
10 1) is **DENIED**.

11 IT IS FURTHER ORDERED that this action is **DISMISSED**. The clerk of the court shall  
12 enter judgment accordingly and close this action.

13 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

14 DATED: May 25, 2016

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Gloria M. Navarro, Chief Judge  
United States District Court  
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